

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

David Moore,

Complainant

against

Docket #FIC 2018-0068

Director of Human Resources,  
City of Shelton; and  
City of Shelton,

Respondents

October 10, 2018

The above-captioned matter was heard as a contested case on April 18, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by eight separate requests all issued during January 2018, the complainant requested that the respondents provide him with copies of the following records:

a. Request 1, dated January 19, 2018:

Copies of all maintenance, repair, mileage (including current odometer reading) and fuel consumption records for City of Shelton Police Department motor vehicle bearing Connecticut registration AC04448, a 2013 GMC Terrain. Records for any maintenance or repairs shall include an itemization for all work completed and a specific cost for such work, including parts, material and labor. As well, fuel consumption records shall include the number of gallons of fuel consumed by the vehicle since it has been owned by the City of Shelton. Also, please provide any and all documentation evidencing the initial purchase price for the vehicle;

b. Request 2, dated January 19, 2018:

Copies of all maintenance, repair, mileage (including current odometer reading) and fuel consumption records for City of Shelton Police Department motor vehicle bearing Connecticut registration AC0449, a 2016 GMC Acadia. Records for any maintenance or repairs shall include an itemization for all work completed and a specific cost for such work, including parts, material and labor. As well, fuel consumption records shall include the number of gallons of fuel consumed by the vehicle since it has been owned by the City of Shelton. Also, please provide any and all documentation evidencing the initial purchase price for the vehicle;

c. Request 3, dated January 24, 2018:

Copy of the City Ordinance and any other City of Shelton documents defining the general description, supervision received, examples of duties, knowledge skills and abilities and qualifications for the position of Chief of Police in the City of Shelton. The request should include not only the current controlling documents requested above, but also any prior controlling documents in effect at any time over the past twenty years. Should there be prior controlling documents over the past twenty years, this request should include the dates those documents were changed or rescinded, the process by which those changes were determined and enacted and any explanation, description or reasoning for those changes;

d. Request 4, January 24, 2018:

Provide a position description for City of Shelton Police Department employee Chris Rosario. This description shall include a general description for the position served, supervision received, examples of duties, knowledge, skills and abilities required, necessary qualifications, any special requirements and the terms of employment, including rate of pay and complete benefit package. As well, include all documentation evidencing the interview and selection process conducted prior to this employee being chosen for this position;

e. Request 5, dated January 26, 2018:

Time card records for Shelton Police Department employees Shawn Sequeira and George Rodriguez for calendar years 2015, 2016 and 2017. The records should include dates worked, punch in and punch out times, paid time off entries and any overtime or compensatory time payments;

f. Request 6, dated January 26, 2018:

Copies of all overtime and compensatory time pay vouchers submitted to and/or paid by the City of Shelton for Shelton Police Department employees Shawn Sequeira and George Rodriguez for the calendar years 2015, 2016 and 2017;

g. Request 7, dated January 28, 2018:

Copy of all documents related to any work performed on Shelton Police Department cruiser car #128 by C&C Automotive or any other repair or maintenance service or automotive garage occurring from February 1, 2017 to the date of this request. These documents should include any written requests for repairs submitted by the City of Shelton Police Department to C&C Automotive or any other repair or maintenance service or automotive garage and any diagnosis and/or repairs performed by C&C Automotive or any other repair or maintenance service or automotive garage as a result of the City's request and/or such diagnosis as well as costs and payments associated with performing the repairs; and

h. Request 8, dated January 29, 2018:

Copies of records of all payments to the law firm of Pullman and Comley, LLC, or any other law firm or attorney for legal services provided regarding any labor cases or lawsuits involving Shelton Police Department personnel during the period of March 1, 2017 to the date of the City's response to this request. The records should include invoices, dates of payments, the total amount paid on each date and a detailed explanation and itemization of the services provided along with the corresponding payment. Additionally, please include any cost or fees paid directly by the City of Shelton for associated payments such as travel time, copying, court reporter fees, etc., related to these cases.

3. It is found that, with regard to requests set forth in paragraph 2, subsections a, b, d and g, above, the complainant added the following language: "If there are any fees for . . . copying these records that would require a payment greater than \$20.00, please immediately inform me so that I might exercise my option to inspect the records prior to purchasing those records I choose to be relevant to my request."

4. It is found that, by eight separate letters each issued within four business days of receipt of the respective request, the respondents acknowledged the complainant's requests. With respect to requests set forth in paragraph 2, subsections a through d and f, above, it is found that the respondents reminded the complainant that each of these requests was identical to previous requests that the complainant had submitted and then subsequently withdrawn. With respect to the request for the records described in paragraph 2, subsection c, above, the respondents reminded the complainant that, when he originally submitted this particular request to them on February 9, 2017, they had gathered, reviewed and compiled the responsive records and that there was a balance due for those copies in the amount of \$101.00. The respondents further reminded the complainant that they processed this request before he had withdrawn the request. Finally, it is found that, in response to each of the individual requests set forth in paragraph 2, above, the respondents informed the complainant that they would not begin processing any of the eight requests until the complainant paid the balance due for the records responsive to the request set forth in paragraph 2, subsection c, above, and deposited an additional \$200.00 with the respondents so that the additional seven requests could be processed. It is found that the respondents assured the complainant that, once they had processed the remaining requests and determined the number of copies, any money remaining from the \$200.00 deposit would be returned to the complainant.

5. By letter dated February 7, 2018 and filed February 9, 2018, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide him with records responsive to his requests.

6. Section 1-200(5), G.S., provides:

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

7. Section 1-210(a), G.S., provides in relevant part that:

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-

212, or (3) receive a copy of such records in accordance with section 1-212.

8. Section 1-212, G.S., provides in relevant part that:

(a) Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. . . . The fee for any copy provided in accordance with the Freedom of Information Act:

....

(B) By all [municipal] public agencies . . . shall not exceed fifty cents per page. . . .

....

(c) A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more.

9. It is found that the records requested by the complainants in paragraph 2, above, to the extent that they are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. For purposes of background, it is found that, in early February 2017, the complainant requested that the respondents provide him with copies of maintenance records for a particular city vehicle. It is found that, at such time, it was the complainant's practice to have money on deposit with the respondents so that, as he requested copies, the respondents could process the request, subtract the per page fee from the amount on deposit, and provide the complainant with the copies. It is found that this is the process that the respondents followed with regard to the February 2017 request and, after the respondents subtracted the per page fee, the complainant was left with a credit balance of \$104.50.

11. Thereafter, it is found that on February 9, 2017, the complainant issued a request identical to the request set forth in paragraph 2, subsection c, above. It is found that, on August 17, 2017, the respondents informed the complainant that 411 pages were ready for him to pick up. It is found that the respondents reminded the complainant that he continued to have \$104.50 on deposit and requested that he submit an additional \$101.00 to satisfy the cost for the February 9<sup>th</sup> request. In response, it is found that the complainant requested to inspect the 411 pages. The respondents replied on September 29, 2017, stating that they had compiled the records in good faith and that they expected the complainant to pay them the balance due. It is found that, on November 1, 2017, the complainant filed an untimely complaint concerning this matter with the Commission. Then, by letter dated December 20, 2017, it is found that the complainant notified the respondents that he was withdrawing all outstanding FOI requests, including the February 9<sup>th</sup> request.

12. Thereafter, it is found that the complainant issued the eight requests referenced in paragraph 2, above.

13. It is found that, when the complainant re-issued the request set forth in paragraph 2, subsection c, above, he again requested copies of the records, not access to records. It is further found that the additional language concerning a desire to inspect records as opposed to obtain copies if the cost exceeded \$20.00 was not made a part of this request. See ¶3, above.

14. It is found that, immediately upon receipt of the request set forth paragraph 2, subsection 3, above, the respondents had the 411 copies prepared and ready for disclosure, as they had gathered, reviewed and assembled these records in connection with the February 9<sup>th</sup> request. Based on the facts presented in this case, it is found that it was proper for the respondents to ask the complainant to pay \$101.00 for the records responsive to the request set forth in paragraph 2, subsection 3, above—that is, the total cost for 411 pages (\$205.50), minus the credit the complainant had with the respondents (\$104.50).

15. It is further found that, pursuant to §1-212(c), G.S., it was appropriate for the respondents to estimate that the remaining seven requests could result in responsive copies totaling \$200.00. Accordingly, it is found that it was not inappropriate for the respondents to require a \$200.00 prepayment from the complainant. Moreover, it is found that, after receiving the respondents' request for prepayment, the complainant did not approach the respondents and state that, with regard to the request in paragraph 2, subsections a, b, d and g, above, he now wanted to review the records, as oppose to receive copies. See ¶ 3, above.

16. Finally, the complainant contended that the respondents failed to give him all responsive records concerning the maintenance and gas records concerning a particular 2013 GMC Terrain. It is found that the complainant initially made the request for these records on March 8, 2017 and that the respondents disclosed responsive records to him on August 4, 2017. It is found that no complaint was filed with the Commission concerning the sufficiency of the respondents' disclosure.

17. It is found, however, that the complainant re-issued this request on January 19, 2018 in order to challenge the sufficiency of the respondents' search for, and disclosure of, responsive records. See ¶ 2, subsection a, above. Accordingly, it is concluded that issues concerning such matters are properly before the Commission in the context of the instant case.

18. John Bashar, the Administrative Assistant to the Mayor of Shelton, appeared and testified at the contested case hearing.

19. It is found that the respondents searched for responsive records in the Highway and Bridges Department and in the Finance Department. It is found that the Highway and Bridges Department maintained no responsive records. It is found that the Finance Department did maintain responsive records, including records pertaining to repairs performed on city vehicles by private entities, and all such records were provided to the complainant.

20. It is further found that, at times, the Highway and Bridges Department will perform repairs on the respondent city's vehicles. It is found that, when vehicle repairs are performed by the Highway and Bridges Department, there are very few, if any, records.

21. Finally, with regard to the request for "fuel consumption records" concerning "the number of gallons of fuel consumed by the vehicle since it has been owned by the City of

Shelton,” it is found that the respondents purchase gas in bulk and do not maintain records that would reveal how much gasoline this particular vehicle has consumed since its purchase.

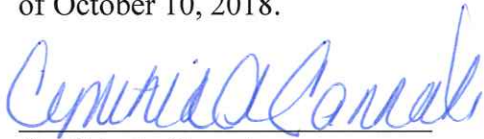
22. Overall, it is found that the respondents conducted a thorough search for records responsive to the request set forth in paragraph 2, subsection a, above.

23. It is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.<sup>1</sup>

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 10, 2018.



Cynthia A. Cannata  
Acting Clerk of the Commission

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<sup>1</sup> While the Commission has determined that the respondents have not violated the FOI Act in this case, it is recommended that, with respect to complainant’s request set forth in paragraph 2, subsection c, above, the respondents allow the complainant to review the 411 pages of responsive records and select the amount of copies that is equivalent to the credit currently on deposit with the respondents.

## CERTIFICATION OF SERVICE

I certify that a copy of the foregoing Notice of Final Decision, dated October 16, 2018, and Final Decision, dated October 10, 2018, was mailed today, October 16, 2018, via certified mail, to the following counsel and party of record:

TO COMPLAINANT(S)

**DAVID MOORE**, 62 Tuckahoe Drive, Shelton, CT 06484

TO RESPONDENT(S)

**DIRECTOR, HUMAN RESOURCES, CITY OF SHELTON; AND CITY OF SHELTON**, c/o Attorney Francis A. Teodosio, Welch, Teodosio & Stanek, LLC, 375 Bridgeport Avenue, Shelton, CT 06484



Cynthia A. Cannata  
Acting Clerk of the Commission